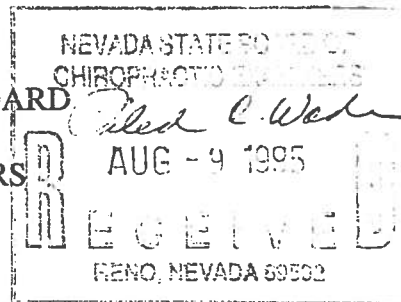


BEFORE THE NEVADA STATE BOARD
OF CHIROPRACTIC EXAMINERS



In the Matter of

JAMES T. OVERLAND, JR., D.C.

Respondent.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

A hearing was held on the above matter by the Nevada State Board of Chiropractic Examiners (Board) on June 3, 1995, at 10:00 a.m., at the Office of the Nevada State Board of Chiropractic Examiners Conference Room, 4600 Kietzke Lane, Reno, Nevada. The hearing was conducted in compliance with the provisions of chapters 233B and 634 of the Nevada Revised Statutes (NRS) and chapter 634 of the Nevada Administrative Code (NAC). Dr. Overland appeared and represented himself. Deputy Attorney General Ronda Moore appeared and presented the case against Respondent. Board member John Lukens, Esq., advised the Board in matters of procedure and order.

The Board, having duly considered the evidence introduced by the parties, both oral and documentary, and having fully considered the law and being fully advised herein, makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent received a letter from the Board by certified mail on January 13, 1995, informing him that his license was automatically suspended because he had failed to pay his renewal fees.

2. Respondent received a letter from the Board by certified mail on February 2,

1 1995, informing him that he had failed to turned in his self-inspection form and that he may
2 be subject to disciplinary action as a result.

3 3. During the month of February, Respondent spoke on the telephone with the
4 Board President, Jeffrey Andrews, D.C., about the suspension of his license and that it would
5 not be reinstated until he paid the renewal fees. During the conversation, Respondent told
6 Dr. Andrews that a check for his renewal fees had already been sent to the Board.
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8 4. Respondent was served with a Complaint and Notice of Hearing by certified
9 mail on March 2, 1995, charging him with four counts of violating the Chiropractic Act and
10 accompanying regulations.

11 5. Respondent understood from the Complaint and Notice of Hearing that he was
12 charged with unprofessional conduct for practicing on a suspended license, not paying his
13 renewal fees, not turning in his self-inspection form and for making a factual
14 misrepresentation to Board staff.
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16 6. Respondent was served again with a copy of the above-mentioned Complaint
17 and Notice of Hearing by hand delivery on May 11, 1995.

18 7. Respondent admitted that he had personally received, read and understood the
19 two letters from the Board and the two copies of the Complaint and Notice of Hearing.
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21 8. Respondent continually practiced chiropractic and treated patients for almost
22 five months with full knowledge that his license was suspended. He continued to practice for
23 over three months after he knew the Board had initiated disciplinary proceedings and had
24 charged him with unprofessional conduct for practicing chiropractic on a suspended license,
25 among other charges.

26 9. Respondent admitted that he was guilty of the four charges against him in the
27 Complaint and Notice of Hearing. Nevertheless, with respect to the second charge,
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1 Respondent stated that when he spoke to Dr. Andrews on the telephone in February, he
2 believed a check for his renewal fees was in the mail, although he knew later that no payment
3 had been sent.

4 10. Respondent paid his license renewal fees to the Board on May 23, 1995.
5 Respondent did not mail or otherwise submit payment to the Board for his license renewal
6 fees prior to May 23, 1995.

7 11. With the exception of speaking to Dr. Andrews, who telephoned Respondent
8 in February, Respondent did not attempt to communicate with the Board, its staff or its
9 counsel regarding this matter prior to May 23, 1995.

10 12. As of June 3, 1995, Respondent had not yet submitted his self-inspection form
11 to the Board.

12 13. In 1993, Respondent was late in the payment of his license renewal fees.

13 CONCLUSIONS OF LAW

14 1. The Board had jurisdiction over this matter because Respondent is a
15 chiropractor licensed by the Board.

16 2. NRS 634.140(1) provides that the Board may initiate disciplinary action for
17 unprofessional conduct by a chiropractor. If the Board finds that a chiropractor is guilty as
18 charged, it may impose discipline as authorized in NRS 634.190(2).

19 3. By not timely submitting his self-inspection form to the Board, Respondent has
20 engaged in unprofessional conduct as defined in NAC 634.430(2)(c), for failing to make a
21 report or record available to the Board upon lawful request.

22 4. By falsely representing to the Board that a check for renewal fees was in the
23 mail, or in the alternative, by failing to contact the Board to correct the inaccurate statement
24 when he discovered that no check had been sent, Respondent engaged in unprofessional
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1 conduct as defined in NAC 634.430(6), for knowingly giving false information to the Board.

2 5. By failing to pay timely his license renewal fees as required by NRS
3 634.130(2), Respondent engaged in unprofessional conduct as defined in NRS 634.015(5),
4 for willful disobedience of the law.

5 6. By continuing to practice chiropractic on a suspended license in violation of
6 NRS 634.227(2) and after being informed by the Board that he must cease and desist such
7 practice until reinstatement, Respondent engaged in unprofessional conduct as defined by NRS
8 634.015(5), for willful disobedience of the law.

9 7. Viewing the circumstances in the best light in favor of Respondent, the Board
10 concludes that Respondent may have honestly misunderstood the gravity of the matter until
11 he received the Complaint and Notice of Hearing on March 3, 1995. Although he actually
12 practiced on a suspended license for almost five months, the Board concludes that for only
13 three of those months did Respondent practice in open defiance of the laws of the state and
14 those of the Board. The Board finds that Respondent wrongfully practiced for a period of
15 90 days without adequate excuse or justification.

16 8. The Board finds Respondent's explanations regarding his conduct to be mere
17 excuses and unworthy of being given credence by the Board. Respondent stated that he was
18 not suffering a financial hardship that prevented him from renewing his license. He explained
19 that he had a bookkeeper whose practice was to specifically inform him of all bills as they
20 came in for payment. When asked why he did not renew when he received notices in January
21 and February that his license was suspended but would be promptly reinstated upon payment
22 of the fees, he responded that he did not want anyone to know he did not pay his bills on
23 time. When asked why he did not try to make arrangements with the Board to resolve the
24 problem, or even telephone the Board or its counsel, once he received notice that the Board
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1 had initiated formal disciplinary action, Respondent answered that he did not know. The first
2 time he contacted the Board regarding this matter, almost three months after being served
3 with the Complaint and Notice of Hearing and approximately ten days before the hearing,
4 Respondent asked that the Board call off the hearing because his wife had a doctor's
5 appointment that day.
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7 9. Respondent claimed that he did not intend to defy the Board or the laws of the
8 state that require actively practicing chiropractors to be properly licensed, yet he offered no
9 rational explanation for continuing to see patients after so many communications from the
10 Board and even after disciplinary charges had been brought against him. The Board is left
11 with no alternative than to conclude that Respondent simply did not consider it sufficiently
12 important to keep his chiropractic license current and in good standing. Similarly, the Board
13 can only conclude that Respondent was not concerned that his professional reputation or that
14 the status of his license might be damaged if he were found guilty of four counts of
15 unprofessional conduct.
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17 10. The Board finds it very disturbing that a licensee would ignore or be unaware
18 of the serious issues of practice without the benefit of a current license in good standing. Not
19 only is unlicensed practice a clear violation of the Chiropractic Act, it is a felony offense
20 punishable by imprisonment. There are also significant issues of liability and malpractice
21 insurance coverage that attach to practice on a suspended license. Among the least of the
22 serious consequences is that patients will be harmed when third party payors rightfully refuse
23 to pay claims for treatment by a chiropractor with a suspended license. A chiropractor who
24 seemingly views his obligation to keep his license current and in good standing as a mere
25 technicality, and who seemingly views the Board's formal enforcement and disciplinary
26 actions as comparable to the actions of a pesky creditor, raises concerns that reach far beyond
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careless bookkeeping or excusable forgetfulness.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, and good cause appearing therefor, the Board orders the following:

1. That Respondent be issued a public reprimand regarding his conduct in this matter.

2. That Respondent be assessed the costs incurred by the Board relating to these disciplinary proceedings, the exact amount to be determined as soon as practicable and an accounting thereof given to Respondent. Respondent's overpayment of \$50 on May 23, 1995, shall be credited toward the total costs owed.

3. That Respondent be assessed a fine above and beyond the costs assessed in the preceding paragraph. The amount of such fine shall be determined by subtracting the costs assessed in the preceding paragraph from \$2,500.

4. That Respondent pay the fine and the costs so assessed, the total amount not to exceed \$2,500, within one year of the signing of this Order by the Board.

5. That Respondent submit his completed self-inspection form to the Board by June 13, 1995.

6. That Respondent's license to practice chiropractic be suspended for 90 days. Such suspension shall not become effective until June 19, 1995, in order to give Respondent time to notify his patients and make arrangements for temporary coverage of his practice by another chiropractor.

7. That Respondent be placed on probation for a period of three years beginning June 3, 1995.

8. That if Respondent violates any provision of this Order or of the Chiropractic

1 Law and accompanying regulations during the probationary period, his license shall be
2 automatically suspended.

3 Dated this 1th day of August, 1995.

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5 STATE BOARD OF CHIROPRACTIC EXAMINERS
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7 By: Jeffrey N. Andrews DC
8 President of the Board
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